

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NELS RIETH,

Petitioner,

v.

Case No. 05-C-513

DAVE BURTON,

Respondent.

ORDER

Petitioner Nels Rieth has filed a notice of appeal of my decision denying his petition under 28 U.S.C. § 2254. Before an appeal may be taken, however, the petitioner must be granted a certificate of appealability. 28 U.S.C. § 2253(c)(1). A certificate may only issue if the petitioner has shown the denial of a constitutional right. 28 U.S.C. § 2243(c)(2). The standard requires me to consider whether reasonable legal minds could disagree about the manner in which I resolved the underlying petition. *See Dalton v. Battaglia*, 402 F.3d 729, 738 (7th Cir. 2005).

The petition was based on Rieth's claim that his counsel was ineffective for failing to seek a mistrial or other relief even though he knew a juror had been sleeping throughout much of the trial. I resolved the petition in the government's favor, however, concluding that there was no Sixth Amendment violation. I conclude that reasonable jurists could disagree about that issue, and so I GRANT the petitioner a certificate of appealability.

Dated this 10th day of July, 2006.

s/ William C. Griesbach

William C. Griesbach
United States District Judge